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**MAILED**  
**AUG 01 2011**  
**OFFICE OF PETITIONS**

In re Patent of :  
Davis et al. :  
Patent No. 6,054,038 :  
Issue Date: 04/25/2000 :  
Application No.: 09/093001 : **DECISION**  
Filing or 371(c) Date: 06/08/1998 0 : **ON PETITION**  
Title of Invention: :  
PORTABLE, HAND-HELD, IN-SITU :  
ELECTROCHEMICAL SENSOR FOR :  
EVALUATING CORROSION AND :  
ADHESION ON COATED OR UNCOATED :  
METAL STRUCTURES :

This letter is in response to the correspondence and fee, filed June 30, 2011. The correspondence and fee are treated as a renewed petition under 37 CFR § 1.378(b), to reinstate the above-identified patent.

Applicant is given a period of ONE (1) MONTH from the mail date of this decision to file a reply to this letter. Extensions of time under 37 CFR 1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

**Background**

The patent issued April 25, 2000. Patentee could have paid the seven and one half (7½) year maintenance fee between April 25, 2007 and October 25, 2007, without a surcharge, or within the six (6) month grace period between October 26, 2007 and April 25, 2008. Patentee failed to do so; accordingly, the patent became expired on midnight of April 25, 2008.

**The March 30, 2011 petition**

Petitioner, assignee of the present patent, filed a petition to reinstate the above-identified patent, on March 30, 2011, wherein petitioner provided that their current patent docketing system, while fully automated, is overseen by an Office Administrator. In the present case, Petitioner provided that the former Office Administrator charged with oversight of the docketing system, and who

would have received any and all maintenance fee reminders on behalf of the Assignee, was terminated for cause during the period that the present patent was to expire. Petitioner provided further that subsequent reviews by their Firm's current Office Administrator did not disclose the maintenance fee expiration, due to improper entries made by the former Office Administrator.

Petitioner stated further that in the process of a self-imposed audit of their records in March, 2011, the expiration of the patent was discovered, and concluded that reasonable care was taken to ensure that payment of the maintenance fee would be made in a timely manner.

#### The Decision dismissing the petition

A Decision dismissing the petition was mailed May 5, 2011. The Decision dismissing the petition required that Petitioner explain the error, or the exact circumstances that caused the error putatively made by the former Docket Administrator that was the cause of the delay in paying the maintenance fee. Petitioner must identify the error that was the cause of the delay.

Petitioner was also required to demonstrate that there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance

Further to this, a statement from the former Office Administrator stating what, if any, error he/she made. Petitioner was informed that an adequate showing of unavoidable delay requires a statement by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them.

Finally, petitioner was informed that what is also required is evidence of the training and supervision of the former Office Administrator during his/her employment with Petitioner, from a person with firsthand knowledge of the former Office Administrator's training and experience, i.e. the former Office Administrator's trainer/supervisor, attesting to the training and supervision of the former Office Administrator, such that reliance upon the former Office Administrator to perform the clerical task putatively resulting in the delayed payment of the maintenance fee, was reasonable.

#### **The present correspondence and fee.**

Petitioner herein files a copy of the Decision, mailed May 5, 2011, a copy of the present patent, and the fee for reconsideration of a petition dismissing a petition to reinstate an expired patent only.

#### **Requirement for Information**

Petitioner is advised that a request for reconsideration of the Decision must address the deficiencies noted above.

#### **Petitioner's current options**

I. Petitioner may file a request for reconsideration.

If reconsideration of this decision is desired, a petition for reconsideration must be filed within ONE (1) MONTH from the mail date of this decision. A request for reconsideration of the Decision must address the deficiencies noted above. The petition for reconsideration should be entitled "Petition for Reconsideration under 37 CFR 1.378(b)." Receipt of the fee for a petition for reconsideration of the May 5, 2011 decision is hereby acknowledged.

After a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. Therefore, it is extremely important that petitioner supply any and all relevant information and documentation with his request for reconsideration. The Commissioner's decision will be based solely on the administrative record in existence. Petitioner should remember that it is not enough that the delay was unavoidable; petitioner must prove that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence to 'show' that the delay was unavoidable. Therefore, if a request for reconsideration is filed, it must establish that the entire delay in the submission of the maintenance fee was unavoidable.

II. Petitioner may request a refund of the maintenance fee and surcharge which accompanied the March 30, 2011 petition.

Petitioner may request a refund of the maintenance fee and surcharge by writing to the Office of Finance, Refund Section, Commissioner for Patents, Washington, DC, 20231. A copy of this decision should accompany petitioner's request.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                      Mail Stop PETITIONS  
                                    Director for Patents  
                                    PO Box 1450  
                                    Alexandria, VA 22313-1450

By FAX:                      (571) 273-0025  
                                    Attn: Office of Petitions

By hand:                     Customer Service Window  
                                    Randolph Building  
                                    401 Dulany Street  
                                    Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

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Office of Petitions